

Congress of the United States

Washington, DC 20510

May 4, 2020

The Honorable William P. Barr
Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr:

We write as the Maryland Congressional Delegation to urge the Department of Justice to take action in order to halt the spread of COVID-19 in federal correctional facilities. It is our view that outbreaks of the virus represent a clear threat to the health of incarcerated individuals as well as federal employees and surrounding communities. Despite the extraordinary nature of this public health crisis, we believe that sensible, measured policies from the Department of Justice can help protect thousands of men and women.

In Maryland, we have received troubling reports about conditions for prison guards, health staff, and incarcerated individuals at the medium-security FCI Cumberland in Western Maryland, in addition to the minimum security satellite camp. These facilities hold roughly 1,200 incarcerated individuals. The reports highlight staff shortages; inadequate personal protective equipment (PPE) and medical services for guard, staff, and incarcerated individuals; and a failure to follow Centers for Disease Control (CDC) guidelines for containing the virus. Further, press reports indicate that incarcerated individuals working in a Unicor factory at this facility had to continue making license plates even after several factory workers tested positive for the virus, in order to avoid interruptions to shipments.

Maryland does not have a dedicated pre-trial detention facility for federal incarcerated individuals. Consequently, federal incarcerated individuals are held at a variety of state and local detention centers, including the Chesapeake Detention Center in Baltimore, Maryland and the Central Detention Facility and Correctional Treatment Facility in Washington, DC. In the case of the latter, DC correctional workers took the step of supporting a lawsuit by incarcerated individuals against the city's Department of Corrections over what they argue is a failure to protect incarcerated individuals during the coronavirus outbreak. On April 19, 2020, a federal judge issue an emergency order for the DC jail to immediately overhaul health, sanitation and social distancing measures for the 1,400 incarcerated individuals there to combat climbing infection rates of the virus. The judge cited the climbing rate of infection that has put 60 percent of incarcerated individuals under quarantine and taken one-quarter of prison staff off their jobs. Studies indicate that the confirmed infection rate per capita for incarcerated individuals behind bars at DC correctional facilities was 15 times that for the city's population as a whole, and the infection rate for corrections employees was six times that for the population as a whole.

Currently, correctional facility personnel constitute a significant amount or even a majority of positive cases in several institutions, heightening fears of potential community transfer. The continuing spread among incarcerated individuals puts them, the staff, and the medical personnel assigned to the correctional facilities at risk. The only proven methods of slowing the spread of COVID-19 to date – social distancing, washing hands, and sanitary spaces – face significant hurdles where populations are concentrated, such as correctional facilities. Prisons often confine large groups of medically vulnerable and elderly incarcerated individuals together, and face a large movement of daily worker populations entering the facility and then going back home to their communities. Indeed, studies have shown that the virus spreads more aggressively behind bars, at roughly eight times the rate it does in the general community.

We urge you to direct the Bureau of Prisons to take steps to ensure that federal correctional staff, including both prisons guards and health staff, receive adequate supplies of PPE, regular testing, and health care support, including full pay if they become sick with the virus. We believe that correctional staff, including both guards and health staff, should now be treated as essential employees. We also urge you to consider treating prison guards as federal law enforcement officers and provide them the same protections as first responders that are putting their lives on the line every day.

The CARES Act provides the Department of Justice with a number of tools in order to alleviate challenges posed by the public health crisis. Section 12003(b)(2) states that “if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time” for the placement of individuals in home confinement. We were encouraged by your memorandum dated March 26, 2020, directing the Bureau to prioritize the use of its statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic, particularly at-risk individuals incarcerated for nonviolent crimes and who pose a minimal risk of recidivism. These measures will go a long way in saving lives, and we encourage swift implementation of these new measures by the Department.

Furthermore, we encourage your active participation in the coming discussions for the next COVID-19 legislative package. The First Step Act, which President Trump signed into law in December 2018, set a strong example of how the federal government can better consider the medical needs of inmates that are being prepared for re-entry back into their communities. We believe that future legislation could address the use of compassionate release, home confinement, and furloughs, as well as prevention, treatment, reentry support, and incentives for state and local governments to tackle public health concerns in their own correctional facilities.

We look forward to continuing to work with you and the Department of Justice to protect all the people of Maryland from the further spread of this dangerous virus.

Sincerely,

/s/ Benjamin L. Cardin
United States Senator

/s/ Chris Van Hollen
United States Senator

/s/ Steny H. Hoyer
Member of Congress

/s/ C.A. Dutch Ruppersberger
Member of Congress

/s/ John P. Sarbanes
Member of Congress

/s/ Andy Harris, M.D.
Member of Congress

/s/ Anthony G. Brown
Member of Congress

/s/ Jamie Raskin
Member of Congress

/s/ David Trone
Member of Congress

CC: Michael Carvajal, Director, Federal Bureau of Prisons, U.S. Department of Justice